

AMENDED IN ASSEMBLY MAY 4, 2005

AMENDED IN ASSEMBLY APRIL 19, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 1459

Introduced by Assembly Member Canciamilla

February 22, 2005

An act to amend Sections 116.240 and 116.940 of, and to add Sections 116.221, 116.222, ~~116.223~~, and 116.232 to, the Code of Civil Procedure, relating to small claims court.

LEGISLATIVE COUNSEL'S DIGEST

AB 1459, as amended, Canciamilla. Small claims court: jurisdiction.

(1) Existing law specifies that the jurisdiction of the small claims court includes various actions in which the demand does not exceed \$5,000, with specified exceptions. This jurisdiction also includes defendant guarantors who are required to respond based upon the default, actions, or omissions of another, if the demand does not exceed \$2,500, or \$4,000, in the case of certain guarantors, as specified.

This bill would increase the small claims court jurisdiction over actions brought by a natural person, if the amount does not exceed ~~\$7,500~~ *\$10,000*, with specified exceptions. The bill would also require, in small claims court actions to enforce the payment of a debt, that the statement of calculation of liability separately state the original debt, and other payments to the debt, as specified. The bill would increase the filing fee for cases in which the jurisdictional limit exceeds ~~\$5,000~~ *\$25.00* ~~but is no more than \$7,500~~ *by \$5, and would increase the filing fee for cases in which the jurisdictional limit*

exceeds \$7,500 but is no more than \$10,000 by \$10, as specified, with the increase in fees to be used for advisory services and translator services.

(2) Existing law authorizes small claims court cases to be heard by temporary judges who are members of the State Bar, and who are sworn and empowered to act in this capacity.

The bill would require temporary judges, prior to serving in small claims court, to take a course of study, offered by the Department of Consumer Affairs, covering specified state, *and* federal, ~~and local~~ laws.

(3) Existing law requires each small claims court advisory service, offered without charge to litigants and potential litigants, to provide individual personal advisory services, in person or by telephone, and by any other means reasonably calculated to provide timely and appropriate assistance.

This bill would require the topics covered by individual personal advisory services to include preparation of small claims court filings, filings, procedures, including procedures related to the conduct of the hearing, collection of small claims court judgments, and information about the availability of ~~translation interpreter~~ services. ~~The bill would also require the small claims court, in counties with a substantial number of non-English speaking people, as defined, to designate at least 2 court days per month for a court-paid translator to be present, and would require the court to provide notice of the translation service.~~ The bill would include related findings and declarations of the Legislature.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. (a) The Legislature finds and declares all of the
2 following:

3 (1) The quality of and access to justice in small claims court in
4 California varies widely from jurisdiction to jurisdiction. The
5 small claims court system should be improved in the following
6 ways:

7 (A) Commissioners and ~~judges pro tem~~ temporary judges
8 adjudicate many complex issues including, but not limited to,
9 consumer law, ~~landlord-tenant law, rent control~~ rent deposit law,

1 tort law, and contract law. In its report to the Judicial Council on
2 the California three track civil litigation study, Consumers Union
3 maintains that paid court commissioners, “see the full panoply of
4 issues raised in small claims cases, and part of their job is to
5 become knowledgeable in the areas of law likely to arise in small
6 claims court. Further, they have the time and duty to research
7 issues of law likely to arise in small claims court...[and those]
8 that arise with which they are not familiar.” The potential
9 knowledge gap between ~~judges pro tem~~ *temporary judges* and
10 commissioners should be narrowed through better and timely
11 training.

12 (B) For advisers, improvements need to be made in the
13 availability of in-person assistance and in the knowledge and
14 experience of the advisers.

15 (C) Qualified ~~translators~~ *interpreters* are not available in many
16 jurisdictions in California. With the increasing ~~ethnic~~ *linguistic*
17 diversity in California’s population in recent decades, the need
18 for ~~translation~~ *interpreter* services has grown proportionately.

19 (b) (1) It is the intent of the Legislature to raise the
20 jurisdictional limit for natural persons only.

21 (2) It is the intent of the Legislature that the jurisdictional limit
22 of subdivision ~~(b)~~ *(a)* of Section 166.231 of the Code of Civil
23 Procedure and subdivision (c) of Section 116.220 of the Code of
24 Civil Procedure shall not be changed by this legislation.

25 (3) It is the intent of the Legislature that jurisdictional limits
26 shall not be raised again, particularly with respect to individuals
27 as defendants, until services are funded at a level sufficient to
28 provide all of the following:

29 (A) In-person advice from advisers who are legal
30 professionals.

31 (B) Staffing levels that are adequate to meet the demand, and
32 also adequate to permit the small claims court advisory service to
33 provide services to both parties in a small claims court case
34 without conflicts of interest.

35 ~~(C) Professional, trained decisionmakers in counties choosing~~
36 ~~to raise the limits.~~

37 ~~(D)~~

38 (C) Professional, well-trained decisionmakers, in small claims
39 courts in all counties in California, who meet standards
40 established by the Judicial ~~Council~~.

~~(E) Translation services to the same degree as in superior court in each county. Council.~~

~~(D) Interpreter services shall be made available to non-English speaking litigants.~~

~~(4) It is the intent of the Legislature that commissioners and judges pro tem temporary judges should be knowledgeable of state and federal consumer laws, landlord-tenant laws, along with any applicable county specific laws or ordinances rent deposit law, the state and federal Fair Debt Collection Practices Acts, the federal Truth in Lending Act, the federal Fair Credit Billing Act, the federal Electronic Fund Transfer Act, tort law, online purchasing law and other contract law, defenses to contract claims, and defenses to debts.~~

SEC. 2. Section 116.221 is added to the Code of Civil Procedure, to read:

116.221. In addition to the jurisdiction conferred by Section 116.220, the small claims court has jurisdiction in an action brought by a natural person, if the amount of the demand does not exceed ~~seven thousand five hundred dollars (\$7,500)~~ *ten thousand dollars (\$10,000)*, except for actions otherwise prohibited by subdivision (c) of Section 116.220 or subdivision ~~(b)~~ *(a)* of Section 116.231.

SEC. 3. Section 116.222 is added to the Code of Civil Procedure, to read:

116.222. If the action is to enforce the payment of a debt, the statement of calculation of liability shall separately state the original debt, each payment credited to the debt, each fee and charge added to the debt, each payment credited against those fees and charges, all other debits or charges to the account, and an explanation of the nature of those fees, charges, debits, and all other credits to the debt, by source and amount.

~~SEC. 4. Section 116.223 is added to the Code of Civil Procedure, to read:~~

~~116.223. (a) In a county with a substantial number of non-English speaking people, as defined in Section 7296.2 of the Government Code, the small claims court shall designate at least two court days per month for a court-paid translator to be present and shall notify the commissioners and judges pro tem of those designated days.~~

~~(b) Notice of translation services shall be posted in the court's office and printed in Spanish and other languages in which translation services are provided. The notice shall state that translation services will be available on designated days and that any party has the right to request the setting of his or her case for a day on which translation services are available.~~

~~SEC. 5.~~

SEC. 4. Section 116.232 is added to the Code of Civil Procedure, to read:

116.232. (a) The filing fee for cases in which the jurisdictional limit exceeds five thousand dollars (\$5,000) ~~shall be twenty-five dollars (\$25). The five dollar (\$5) increase above~~ but is less than or equal to seven thousand five hundred dollars (\$7,500) shall be five dollars (\$5) more than the filing fee set forth in subdivision (a) of Section 116.230. The filing fee for cases in which the jurisdictional limit exceeds seven thousand five hundred dollars (\$7,500), but is less than or equal to ten thousand dollars (\$10,000) shall be ten dollars (\$10) more than the filing fee set forth in subdivision (a) of Section 116.230. The portion of the fee that exceeds the filing fee set forth in subdivision (a) of Section 116.230 shall be used to enhance advisory services ~~and translator services.~~

(b) This fee increment shall supplement, not replace, existing funding sources for advisory services.

(c) Notwithstanding the provisions of this section, the law library fee in effect in the jurisdiction in which a small claims case is filed shall be applicable to all civil filings in which the plaintiff's claim is five thousand dollars (\$5,000) or more.

~~SEC. 6.~~

SEC. 5. Section 116.240 of the Code of Civil Procedure is amended to read:

116.240. (a) With the consent of the parties who appear at the hearing, the court may order a case to be heard by a temporary judge who is a member of the State Bar, and who has been sworn and empowered to act until final determination of the case.

(b) Prior to serving as a temporary judge in small claims court, and at least every three years thereafter, each temporary judge shall take the course of study, ~~which shall be offered by the~~ Department of Consumer Affairs. The course shall include, but

1 not be limited to, state and federal consumer laws,
2 landlord-tenant law along with any applicable county specific
3 ~~laws or ordinances~~ *rent deposit law*, the state and federal Fair
4 Debt Collection Practices Acts, the federal Truth in Lending Act,
5 the federal Fair Credit Billing Act, the federal Electronic Fund
6 Transfer Act, tort law, contract law, including defenses to
7 contracts and defenses to debts.

8 ~~SEC. 7.~~

9 *SEC. 6.* Section 116.940 of the Code of Civil Procedure is
10 amended to read:

11 116.940. (a) Except as otherwise provided in this section or
12 in rules adopted by the Judicial Council, which are consistent
13 with the requirements of this section, the characteristics of the
14 small claims advisory service required by Section 116.260 shall
15 be determined by each county in accordance with local needs and
16 conditions.

17 (b) Each advisory service shall provide the following services:

18 (1) Individual personal advisory services, in person or by
19 telephone, and by any other means reasonably calculated to
20 provide timely and appropriate assistance. The topics covered by
21 individual personal advisory services shall include, but not be
22 limited to, preparation of small claims court filings, procedures,
23 including procedures related to the conduct of the hearing,
24 collection of small claims court judgments, and information
25 about the availability of ~~translation~~ *interpreter* services.

26 (2) Recorded telephone messages may be used to supplement
27 the individual personal advisory services, but shall not be the sole
28 means of providing advice available in the county.

29 (3) Adjacent counties may provide advisory services jointly.

30 (c) In any county in which the number of small claims actions
31 filed annually is 1,000 or less as averaged over the immediately
32 preceding two fiscal years, the county may elect to exempt itself
33 from the requirements set forth in subdivision (b). This
34 exemption shall be formally noticed through the adoption of a
35 resolution by the board of supervisors. If a county so exempts
36 itself, the county shall nevertheless provide the following
37 minimum advisory services in accordance with rules adopted by
38 the Judicial Council:

1 (1) Recorded telephone messages providing general
2 information relating to small claims actions filed in the county
3 shall be provided during regular business hours.

4 (2) Small claims information booklets shall be provided in the
5 court clerk's office of each superior court, the county
6 administrator's office, other appropriate county offices, and in
7 any other location that is convenient to prospective small claims
8 litigants in the county.

9 (d) The advisory service shall operate in conjunction and
10 cooperation with the small claims division, and shall be
11 administered so as to avoid the existence or appearance of a
12 conflict of interest between the individuals providing the
13 advisory services and any party to a particular small claims
14 action or any judicial officer deciding small claims actions.

15 (e) Advisers may be volunteers, and shall be members of the
16 State Bar, law students, paralegals, or persons experienced in
17 resolving minor disputes, and shall be familiar with small claims
18 court rules and procedures. Advisers may not appear in court as
19 an advocate for any party.

20 (f) Advisers, including independent contractors, other
21 employees, and volunteers have the immunity conferred by
22 Section 818.9 of the Government Code with respect to advice
23 provided as a public service on behalf of a court or county to
24 small claims litigants and potential litigants under this chapter.